

REAL NATURE OF MUSLIM PERSONAL LAW

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The issue of Muslim Personal Law is presently engaging the attention of the Muslim community as well as the country in general. That seems quite natural, as it relates to the social, cultural, moral and religious interests of millions of our people. It is not merely an academic issue but a practical problem whose solution, and the way the solution is found, are sure to have far reaching consequences for the religious and cultural life of the Muslims of India. The gravity of the issue demands that we steer clear of irrational conservatism and narrow-mindedness and also of blind imitation and unprincipled adjustment with the mood of the times. Any deviation from the correct approach will distort our views on the issue and do irreparable harm to collective life. An attempt is made in what follows to give a cool, just and balanced analysis of the problem. I shall confine myself to a fundamental question of decisive importance: what is the real nature of the Muslim Personal Laws? Why is the body of laws under discussion called Muslim Personal Law? Is it because of their having evolved from the customs and traditions of the Muslim people over their long past and their having been adopted by the Muslim community to suit its convenience in social and cultural affairs? Or is it rooted much deeper into that faith and conduct of life; allegiance to which

makes one a Muslim? Aren't these laws an inalienable part of the Islamic injunctions to which a Muslim must adhere steadfastly lest he ceases to be a Muslim? Should this be the real position our approach to Muslim Personal Laws will be entirely different from that resulting from the position mentioned earlier. The two approaches are entirely different in their logical implications.

Consulting the basic sources of Islam-the book of Allah and the Sunnah of the Prophet-we come across four facts relevant to the issue at hand.

1. The Qur'an and the Sunnah do deal with personal affairs of people. There are hardly any matters coming within the scope of Muslim personal laws on which these sources do not give specific rulings. They contain specific laws relating to Marriage, *Mehr*, *Divorce*, *Khula*, *Ila*, *Iddah*, *Zihar*, *Kazaah*, *Inheritance*, *Will* and *Wakf* (i.e. different aspects of family life).

This is too well known a fact to require documentation before a well informed audience.

2. These laws are intrinsically related to the basic values and ideals of our religion i.e. Islam. They do not just happen to be there in the sources of Islam; they are there by virtue of their being essential manifestation of the spirit of Islam and necessary corollaries to its ethical approach to living. An example will clarify this point: In Islam the supreme value attaches to a person's faith and its preservation ranks highest in the objectives of Islamic Law. The

prohibition of marital relations between Muslims and non-Muslims inevitably follows from this basic value.

This is why the instructions of Qur'an asking Muslims not to marry non-Muslims are followed by the significant statement: 'These invite unto the Fire, and Allah inviteth unto the Garden, and unto forgiveness by His grace'. (II:221)

The meaning of this statement is clear. The powerful emotional ties built by companionship in marriage expose the Muslim partner to the danger of being influenced by the un-Islamic beliefs and practices of his or her non-Muslim partner. The offspring of such couples are more strongly exposed to this danger which might ultimately lead to their being condemned in the life hereafter. A Muslim must not, therefore, invite disaster by exposing himself to this danger in choosing his or her spouse.

Take another example. Chastity is the essence of humanity, an exalted ethical value. Corruption of this value would be disastrous for the Islamic way of life. This is the context in which rules relating to *purdah* have been laid down. Preservation of this value is also the object of making marriage obligatory. Says the Prophet:

'O Youngmen! Whosoever can afford to marry should do so as it maintains piety in sex and saves the eyes from distraction'.

The Quran refers to the same value while allowing marriage with slave girls:

'This is for him among you who feareth to commit sin'. (IV: 26)

With the same end in view the Muslim society has been asked to see to it that widows and widowers and the marriageable slaves are settled in marriage:

‘And marry such of you as are solitary and the pious of your slaves and maid servants’.

(XXIV: 32)

The moral and social grounds for allowing polygamy also include, at least in some cases, this objective of maintaining a standard of chastity. The chief objective of this institution is, however, the realisation of another basic Islamic value, that is the protection of the rights of the weaker sections of society, especially the orphans, and furtherance of their good. The verse of the Qur'an containing this permission reads:

‘And if ye fear that ye will not deal fairly by the orphans, marry of the women, who seem good to you, two or three or four; and if ye fear that ye cannot do justice (to so many) then one (only) or (the captives) that your right hands possess. Thus it is more likely that ye will not do injustice’. (IV :3)

Though other texts in the Qur'an and Sunnah imply that permission to polygamy is not bound with the condition that it should be exclusively with a view to protecting the rights of the orphans, this nevertheless clearly stands out as the chief objective of this permission in the light of the above instruction. In order to ensure a just and benign treatment to the orphans the Qur'an, in the above verse, suggests that people may marry these orphans' widowed mothers. This is likely to invoke love towards these orphans and

lay a secure emotional base for a sympathetic and affectionate attitude towards them.

3. The third outstanding feature of these laws as found in the Qur'an and Sunnah is that they are not only stated therein but also emphasized as being duties God has enjoined on His subjects. They are there as His Commands; as boundaries set that regulate freedom of action. Man must respect these boundaries and bow to these Commands.

Thus the rules relating to marriage are followed by phrases such as:

'It is a decree of Allah for you'. (IV : 24)

'That is the judgment of Allah. He judgeth between you.' (LX :10)

Rules regarding divorce (by the husband) or one obtained on the wife's initiative; are followed by the warning:

'These are the limits (imposed by) Allah. Transgress them not: (II: 229)

The laws relating to the wife of a deceased husband observing certain restraints are followed by the reminder that:

'That is the Commandment of Allah which He revealeth unto you. (LXV: 5)

At yet another place such rules have been described as 'limits imposed by Allah'. (LXV: 2) The law of inheritance in the Qur'an (IV: 7-14) touch upon four different aspects of the nature and importance of these rules. First of all it has been emphasized that the heirs are to share the legacy and these shares are

defined by God Himself. The details of the law are prefaced by the phrase 'Allah chargeth you'. This is to impress upon the reader that these laws are God-given; hence they are to be observed scrupulously. As the statement of the details proceeds; it is supplemented by the declaration 'It is an Injunction from Allah'. Finally, they are concluded on the reminder that 'these are the limits (imposed by) Allah'. One cannot but be deeply impressed by the care taken by the Qur'an to impress upon its readers the nature of these laws and the fact that they are obligatory.

4. This leads us to the fourth and the last fact relating to these laws, namely observance of them being a necessary corollary to one's faith, an inalienable part of a God-fearing pious conduct of life. By their very nature, their contravention amounts to transgression, sin and apostasy. This point is fully borne out by the relevant texts of the Qur'an and Sunnah. Referring once again to the law of inheritance we find the following statement as they are concluded on the reminder that 'these are the limits (imposed by) Allah:

'And whose disobeyeth Allah and His messenger and transgresseth His limits, Allah will make him enter Fire, where such will dwell forever; this will be a shameful doom'. (IV: 14)

In the same manner divorce rules are followed by the remark:

'This is an admonition for him among you who believeth in Allah and the Last Day. That is more virtuous for you, and cleaner'. (II: 232)

And Laws relating to Zihar are concluded on the statement:

‘This that ye may put trust in Allah and His messenger. Such are the limits (imposed by Allah); and for disbelievers is a painful doom’.

(LVIII: 4)

These four features of Islam’s Family Laws are closely interrelated. As a matter of fact it is inconceivable that any one of these features could stand without the other three accompanying it in the Qur’an and Sunnah. The real nature of Muslim Personal Laws is fully borne out by the four facts stated above. They are sufficient to convince a thoughtful reader that these laws are in fact part of religion; that they form an essential chapter in the Qur’an and Sunnah which can neither be torn away nor forgotten. What would remain of Islam and what meaning would attach to religion if one were to deny the real nature of these laws? How could one deny their being part of religion when they are explicitly stated in the Qur’an and explained by the Prophet? What would be the meaning attaching to such statements as ‘Commandment from Allah’, ‘Decree of Allah’ and ‘Limits imposed by Allah’ if one were to deny these laws being essential part of Islam? Would not the very belief in the Qur’an and Sunnah being the final authority, lose all substance?

The above considerations raise the fundamental question as to who is entitle to judge what falls within the scope of a particular religion and what does not. Is it not that religion itself, its source book and the sayings of its Prophet are the final arbiter in this regard? If Knowledge and Justice, Right and Reason

answer in the affirmative one should not hesitate in accepting the fact that Muslim Personal Laws are an essential part of Islam.

Let us now examine the opposite viewpoint and see on what ground they deny this status to these laws and therefore consider them to be changeable. As far as I know they do so on the basis of three "arguments":

1. Their first argument lies in their assertion that affairs such as marriage, divorce, inheritance and will are purely mundane affairs unrelated to worship and the religious life. Rather, they belong to social, cultural and economic spheres of life. By their very nature they can have nothing to do with religion whose essence lies in man's relation with God, His remembrance and worship, and in spiritual efforts directed towards reaching Him. Religion belongs to the places of worship and solitudes of contemplation, not to the heat and din of worldly affairs. The laws called Muslim Personal Laws are therefore not related to the religious life of the Muslims but their worldly life and, as such, are liable to change with the changing conditions of life.
2. Their next argument refers to the changes being freely made in these laws in the Muslim countries. How could these countries and their Muslim rulers change these laws had they been religious in nature?
3. Their third argument relates to the worldly interests of the Muslims themselves. To ensure justice to Muslim women and save them from curtailment of their human rights, and to

safeguard the interests of Muslims in a changing and developing society; their personal laws ought to be changed according to the changed circumstances.

Beneath the first argument lies the misunderstanding that the conception of religion and worship in Islam is the same as in the majority of other religions. Other religions may reject worldly life and may regard the affairs of this life as Satanic snares drawing one away from God. For the quest of God some religions may advise man to live in caves and the solitude of the jungle. But Islam rejects this view. For it, the way to God passes right through the affairs of this life on earth. It does not seek to circumvent or sidetrack it. The multifarious activities of worldly life and its complex problems are the very fields in which one can harvest the seeds for good of the Hereafter and earn the pleasure of the Lord. Real godliness lies in conducting all affairs of this life in accordance with God's will, along with His worship and remembrance. This is why God has given man a complete code of life. There is not a single aspect of man's life which is not guided by His Commandments, all of which are meant for obedience by man, to whatever walk of life they belong. Discrimination between commandments relating to different walks of life would cripple the spirit of true religion. Like all other laws of Islam, the Muslim Personal Laws belong to the indivisible whole of our religion, and assertions regarding their being alienable, smack of ignorance about the very nature of Islam.

The second argument stated above is hardly any argument at all. Even if the Muslim Personal Laws have been freely subjected to changes in some of the

Muslim countries it does not behoove a learned man to infer therefrom that these laws are in reality changeable. By a similar argument it could be made out that as the largest democracy, People's Republic of China, resorts to brain washing, anti-religious reprisals, compulsory labour and the commune system; therefore all these practices are fully congruous with the democratic way of life, and should be adopted. One could go a step further and say that it is the height of conservatism, reactionary mentality and narrow-mindedness that despite the changed conditions; people still insist on preserving features of democracy developed long ago in France, Great Britain and U.S.A. How shall our commonsense react to such an inference? Can it be accepted, even for a fleeting moment, that whatever is being said or done in the name of democracy is *ipso facto* raised to the status of a ruling in the way of life called democracy? If that is repugnant to reason; why should justice be denied to Islam by treating as its authentic interpretation, anything and everything that someone claiming to be its adherent says or does? It is contrary to sound academic tradition to refer in an argument; to amendments in Muslim Personal Laws by people who have borrowed their political, economic and social systems from the west, throwing the Islamic injunctions overboard. They are people under complete sway of the west in their thought and action. The changes they have freely introduced in their personal laws are but one expression of their intellectual slavery to the west.

The third argument mentioned above is in fact a piece of advice. Even though coming from those ignorant of the realities of the situation, we could have

appreciated the sincerity of these well wishers, but we are puzzled by the spectacle that their urge of improving the lot of the Muslim women and furthering the good of the Muslim society lies benumbed when the life and honour of the Muslim women falls prey to beastly attacks and when Muslims are killed and looted. How can we accept the bonafides of these well wishers and persuade ourselves to believe that they genuinely seek the good of the Muslim society? These people should be plainly told that they are ignorant; not only of Islam but also of what the Muslims are. The Muslim Personal Laws being a part of Islam, their observance is a necessary condition of one's being a Muslim. Muslims' welfare does not lie in surrendering a part of their religion but in steadfastly adhering to the whole of religion.

This is the impartial analysis of the arguments given in support of changes in the Muslim Personal Laws. Consciously or unconsciously the protagonists of change ignore the important point that in this issue, like every other issue; "what is" and "what should be" are two separate things. While expressing their opinions on what Muslim Personal Laws should be; these people put across views as if they were describing what these laws in fact are. The real issue being discussed is the place of Muslim Personal Laws in religion; whether it is an integral part of it or not? Whether these laws ought or ought not to form a part of religion, is an entirely different issue. That later question is irrelevant for the purpose in hand. Clear thinking and correct reasoning requires that these two issues are not confused with one another. Whether these laws are a part of religion or not is to be decided by reference to the religion itself as enunciated in the

Qur'an and Sunnah. One is free, however, separately to open a discussion on the other issue; whether these laws ought or ought not to form a part of religion? One is free to go further and assert that the whole set of ideas and the system of values behind these laws is false and worthy of being rejected. Indeed one is free even to reject Islam itself and argue his case as best as he can. But no one has the right to deny the existence of something explicitly laid down in the Qur'an and Sunnah or to claim that inspite of explicit provisions therein; these laws do not form a part of the religion. That this law is stated in the Qur'an and Sunnah and therefore is a part of religion; is an objective fact which every fair minded person must accept.

In view of the real nature of these laws which we have explained above; it seems imprudent if not wrong to characterize them as Muslim Personal Laws. They are in reality the Islamic Laws for personal affairs, not 'Muslim' personal laws. That the man in the street does not distinguish between what is 'Islamic' and what is 'Muslim', makes it still more necessary to call these laws by their correct name. We hope it would help remove the current misunderstanding that these laws are merely the products of the social and cultural milieu of the Muslim people as are the laws of some other communities.

I would like to conclude upon a point already hinted at earlier. Only those laws form part of religion, and are therefore immutable, which are stated in the Qur'an and the Sunnah. This status is not enjoyed by the detailed rules and minor provisions of Islamic Law which developed in the later centuries through a process of *ijtehad* (inference from the law provided in the texts of the Qur'an and Sunnah). This

supplementary part of the Muslim Personal Laws is changeable. The laws inferred from the basic textual provisions later on can be amended in accordance with the demands of the changing circumstances (within the scope of the Qur'anic text). This is generally true of all those details of the Islamic law which arose out of *ijtehad* to whatever walk of life they might belong. But even amendment to these laws cannot be 'free'. They have to conform to the juridical principles underlying textual provisions and must be in harmony with the norms, ends and values enshrined in the provisions of Qur'an and Sunnah, some of which we have mentioned above. But a discussion of the conditions attaching to the task of amending these law falls beyond the scope of this brief paper which seeks to clarify the real nature of the Muslim Personal Laws.